IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 20 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DINESH MILLS LTD

Versus

COMMISSIONER OF INCOME-TAX

Appearance:
1. INCOME TAX REFERENCE No. 20 of 1988
MR JP SHAH for Petitioner No. 1
MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE A.R.DAVE
and
MR.JUSTICE D.A.MEHTA

Date of decision: 24/10/2002

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

1 At the instance of the assessee, the following

questions arising out of the order passed by the Income Tax Appellate Tribunal, Ahmedabad Bench "B" have been referred to this Court for its opinion under the provisions of Section 256(1) of the Income Tax Act, 1961 (hereinafter referred to as 'the Act').

AT THE INSTANCE OF THE ASSESSEE.

"[1] Whether on the facts and in the circumstances of the case, the Tribunal was right in law in considering the commission paid to the Managing Director as the perquisite for the purpose of Section 40(c) of the Act ?

[2] Whether, on the facts and in the circumstances of the case, legal and professional expenses of Rs.22,518/- in respect of amalgamation of the sister concern with the assessee company is allowable revenue expenditure or capital expenditure ?"

2 Mr.J.P.Shah, learned Advocate has appeared for the assessee and Mr.M.R.Bhatt, learned Standing Counsel has appeared for the revenue.

3 Learned Counsel have submitted that the questions which have been referred to this Court have already been answered by this Court or by the Apex Court.

4 So far as question No.1 which has been referred at the instance of the assessee is concerned, it has been submitted that the said question has already been answered against the assessee in the case of Commissioner of Income Tax vs. Rohit Mills Ltd., reported in 219 ITR 228. Looking to the law laid down by this Court in the aforesaid judgment, we answer the said question in the affirmative i.e. against the assessee and in favour of the revenue.

5 So far as question No.2 is concerned, looking to the law laid down by the Apex Court in the case of Commissioner of Income Tax vs. Bombay Dyeing and Manufacturing Co.Ltd., reported in 219 ITR 521, we answer the question in favour of the assessee and against the revenue i.e. the legal and professional expenses in respect of amalgamation are allowable as revenue expenditure.

6 The following questions have been referred to this Court at the instance of the revenue :

AT THE INSTANCE OF THE REVENUE.

"[1] Whether, on the facts and in the circumstances of the case, the Appellate Tribunal has not erred in law in holding that a sum of Rs.20,000/- out of Motorcar expenses is not disallowable as personal and non business use of Motor car in the hands of the assessee ?

[2] Whether on the facts and in the circumstances of the case, the Appellate Tribunal is right in law in holding that the assessee is entitled to the depreciation as claimed and and 1/7th portion of the depreciation of Motorcar is not disallowable?"

7 So far as the questions which have been referred at the instance of the revenue are concerned, it has been submitted by the learned Advocate that looking to the law laid down in the case of Sayaji Iron and Engg.Co. Vs. Commissioner of Income Tax, reported in 253 ITR 749 by this Court, the aforesaid questions are required to be decided in favour of the assessee and, therefore, the said questions are also decided in favour of the assessee and against the revenue.

8 The Reference stands disposed of accordingly with no order as to costs.

Sd/- Sd/-

(A.R.Dave, J) (D.A.Mehta, J)

m.m.bhatt